

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 532 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? :

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STATE OF GUJARAT

Versus

MULLO @ JAMAL MEMAN

Appearance:

1. Criminal Appeal No. 532 of 1993
MR DP JOSHI, APP for the appellant
MRS SHILPA J UNWALLA for Respondent
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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 27/09/2001

ORAL JUDGEMENT

By filing this appeal under section 378 of the Code of Criminal Procedure,1973, the State of Gujarat has questioned acquittal of the respondent of the offence punishable under section 142 of the Bombay Police Act,

1951 recorded by the learned Chief Judicial Magistrate, Amreli vide judgment dated February 11, 1993 rendered in Criminal Case No.2828/92.

2. The respondent is a resident of Amreli town. He was convicted more than thrice of an offence within a period of three years under the provisions of the Bombay Prohibition Act, 1949. However, he had continued to engage himself in the commission of offences similar to those for which he was convicted. Therefore, Sub-Divisional Magistrate, Amreli by order dated August 20, 1991 passed under section 57(c) of the Bombay Police Act, 1951 ("the Act" for short) had externed him from Amreli district and districts contiguous thereto for a period of two years. The respondent in contravention of directions issued to him under section 57 of the Act entered Amreli town without permission and was found moving near Khadpith, Jail Road, Amreli by police officers who were on patrolling duty at about 11.00 A.M. on November 25, 1992. The respondent was, therefore, arrested by Jethsurbhai Vasingbhai Ahir, who was serving as unarmed head constable, L.C.B., Amreli, in presence of panch witnesses. A complaint was lodged against the respondent by the said unarmed head constable of the offence punishable under section 142 of the Act. On completion of investigation, the respondent was chargesheeted in the Court of learned Chief Judicial Magistrate, Amreli. The case against the respondent was tried as a summons triable case and his plea was recorded. The respondent pleaded not guilty to the charge and claimed to be tried. The prosecution, therefore, examined; (i) Manubhai Mohanbhai, PW. 1 Exh.4, (ii) Sharad Ratilal, PW.2, Exh.6, (iii) Ratanshi Bhimji, PW.3 Exh.7, (iv) Jethsurbhai Vasingbhai, PW.4, Exh.8, and (v) Shashikant Sohanlal, PW.5 Exh.10, to prove its case against the respondent. The prosecution also produced documentary evidence such as panchnama prepared at the time of arrest of the respondent on November 25, 1992, complaint filed by unarmed head constable Jethsurbhai Vasingbhai, externment order passed under section 57(c) of the Act in support of its case against the respondent. After recording of evidence of prosecution witnesses was over, the learned Magistrate explained to the respondent the incriminating circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement. In his further statement recorded under section 313 of the Code, the respondent claimed that the complaint filed against him was false, but did not examine any witness in support of his defence.

3. On appreciation of evidence adduced by the prosecution, the learned Magistrate deduced that the evidence of police officers that the respondent had entered Amreli town and was found moving on November 25, 1992 at about 11.00 A.M. near Khadpith Jail Road, Amreli, was not supported by the panch witnesses and, therefore, the respondent was entitled to be acquitted. In view of the said conclusion, the learned Magistrate by judgment dated February 11, 1993 has acquitted the respondent, giving rise to present appeal.

4. Mr. D.P.Joshi, learned A.P.P. submitted that the panch witnesses had not supported the prosecution case and as they were permitted to be cross-examined by the learned A.P.P. after declaring them hostile, their evidence should not have been attached much importance while determining the question whether an offence punishable under section 142 of the Act was committed by the respondent or not. The learned counsel for the State asserted that the evidence of Head Constable Ratansinh Bhimji and evidence of complainant Jethsur Vasingbhai indicates that when they and other police officers were on patrolling duty, they had found the respondent moving near Khadpith, Jail Road, Amreli at about 11.00 A.M. on November 25, 1992 and arrested him in presence of panch witnesses and as the sworn testimony of these two police officers has gone totally unchallenged, the respondent ought to have been convicted of the offence with which he was charged. What was stressed was that even without corroboration, the evidence of police officers can be believed if the evidence is otherwise found to be reliable and trustworthy and as the learned Magistrate has acquitted the respondent on erroneous ground, the appeal should be accepted.

5. Ms. Shilpa J. Unwalla, learned counsel for the respondent pleaded that the panch witnesses have not supported the police officers in their case that the respondent was found moving near Khadpith, Jail Road, Amreli at about 11.00 A.M. on November 25, 1992 and as it is not established by the prosecution that the respondent had committed an offence punishable under section 142 of the Act, the appeal should be dismissed.

6. I have heard the learned counsel for the parties and reappreciated the evidence on record. Witness Manubhai Mohanbhai, PW.1 Exh.4 has stated in his evidence that on November 25, 1992, police had obtained his signature on a prepared panchnama near tower, Amreli, but he was not knowing anything in the matter at all. The witness identified signature on panchnama as that of his

and, therefore, the panchnama was exhibited at Exh.5. Obviously, this witness has not supported the prosecution case and, therefore, with the permission of the Court, he was declared hostile and was cross-examined by the learned A.P.P. In cross-examination by the learned A.P.P. the witness denied that he was called as a panch near Jail and that as the respondent had not offered any satisfactory explanation, he was arrested and panchnama was prepared at the said place.

7. Witness Sharad Ratilal, PW.2 Exh.6 has stated in his evidence that on November 25, 1992 the police had obtained his signature on a prepared panchnama, but he was not knowing anything in the matter and that the panchnama Exh.5 was signed by him. This witness was also declared hostile and was permitted to be cross-examined by the learned A.P.P. In his cross examination by the learned A.P.P. the witness denied that he was called as a panch witness near Jail at Amreli and that as the respondent, who was present, could not give satisfactory explanation regarding his presence in the Town, he was arrested and panchnama was prepared.

8. Witness Ratansinh Bhimji, PW.3 Exh.7 has stated in his evidence that three months before the date of recording of his deposition he was on patrolling duty with P.S.I. and Head Constable Jethsurbhai. According to this witness, when they had reached near Khadpith at 11.00 A.M. on November 25, 1992, the respondent was found moving and as the respondent was externed by the Sub-Divisional Magistrate, an explanation was sought from him as to how he was present in Amreli Town. The witness has further informed the Court that the respondent could not give any satisfactory explanation regarding his presence in the Town and, therefore, two panch witnesses were summoned and thereafter the respondent was arrested in presence of panch witnesses and was brought to police station. The most important thing to be noted is that this witness was not cross-examined at all on behalf of the respondent and his evidence was permitted to go unchallenged.

9. Complainant Jethsurbhai Vasingbhai, PW.4 Exh.8 in his deposition before the Court has stated that on November 25, 1992 he was on patrolling duty with P.S.I. and Head Constable Ratansinh as well as police constable Bhupatbhai in Amreli Town. The witness has clearly stated in his deposition that when they had reached near Khadpith, Jail Road, Amreli, they had found the respondent moving there and as the respondent was externed from Amreli district, an explanation was sought

from him as to how he was present in Amreli town. According to this witness, the respondent could not produce any permission enabling him to enter Amreli town and as it was found that he had contravened the order passed under section 57 of the Act, he was arrested after preparing panchnama and was brought to the police station. The witness informed the Court that at the police station he had lodged complaint against the respondent of the offence punishable under section 142 of the Act. In the case of this witness also I find that his deposition was not challenged by the respondent at all and was accepted by him. Witness Jethsurbhai produced on record the complaint which was filed by him against the respondent at the police station which is exhibited as Exh.9. The last witness i.e. Shashikant Sohanlal PW.5 Exh.10, who was serving in the office of Sub Divisional Magistrate, Amreli, produced the externment order on the record of the case. From the evidence on record, it is evident that the testimony of witness Manubhai Mohanbhai and witness Sharad Ratilal was never sought to be relied upon by the prosecution for bringing home guilt to the respondent. With the permission of the Court, they were declared hostile and were cross-examined by the learned A.P.P. The evidence of Head Constable Ratansinh Bhimji and complainant Jethsurbhai Vasingbhai establishes beyond reasonable doubt that at about 11.00 A.M. on November 25, 1992, the respondent was found moving near Khadpith, Jail Road, Amreli and that as he was not permitted to enter Amreli Town, he was arrested and was brought to the police station. Where evidence of a witness is allowed to go unchallenged with regard to a particular point, it may safely be accepted as true. No absolute proposition of law has been laid down either by this Court or by the Supreme Court that if panch witnesses do not support the evidence of police officers, the evidence of police officers should be rejected automatically. The well settled law on the point is that the evidence of police officers can be acted upon if it is found that it is reliable and trustworthy. Therefore, in my view, the learned Magistrate was not justified in acquitting the respondent of the offence punishable under section 142 of the Act on the sole ground that the prosecution case was not supported by panch witnesses. The learned Magistrate ought to have assessed evidentiary value of the deposition given by the police officers and tried to ascertain whether the case of the prosecution is proved or not. As observed earlier, no contradiction worth the name could be brought on record so far as evidence of police officers is concerned. In fact, their evidence was allowed to go unchallenged. Their evidence otherwise

appears to be reliable as well as consistent. Under the circumstances, acquittal of the respondent being erroneous and contrary to the well settled principles of law, is liable to be reversed.

10. For the foregoing reasons, the appeal succeeds. The judgment dated February 11, 1993 rendered by the learned Chief Judicial Magistrate, Amreli in Criminal Case No. 2828/92 acquitting the respondent of the offence punishable under section 142 of the Bombay Police Act, 1951 is reversed. The respondent is convicted of the offence punishable under section 142 of the Bombay Police Act, 1951.

11. I have heard the learned counsel for the State as well as the learned counsel for the respondent with regard to imposition of sentence. Section 142 of the Bombay Police Act, 1951, inter-alia, provides that on conviction, the accused can be punished with imprisonment for a term which may extend to two years, but shall not, except for the reasons to be recorded in writing, be less than six months and also be liable to fine. The record of the case indicates that the respondent was in custody from November 25, 1992 to February 11, 1993. Thus, he has undergone imprisonment of more than 2 1/2 months. Further this was his first offence and it could not be pointed out by the prosecution that from the date of acquittal till this date he was involved in an offence punishable under the provisions of the Bombay Prohibition Act, 1949. Nothing adverse is pointed out by the prosecution against the respondent from February 11, 1993, which is the date of judgment of the learned Magistrate acquitting the respondent, to the date when the appeal was taken-up for hearing and, therefore, it would not be in the interest of justice to impose minimum punishment prescribed for the offence punishable under section 142 of the Act. On overall view of the matter, I am of the opinion that interest of justice would be served if the respondent is punished with imprisonment for the term which he has already undergone and with fine of Rs. 200/- i/d. to undergo S.I. for 7 days. Accordingly, for the offence punishable under section 142 of the Act, the respondent is punished with imprisonment which he has already undergone and also with fine of Rs. 200/- i/d. to undergo S.I. for 7 days. As the respondent has undergone substantive sentence imposed on him, he need not be taken into custody at all and for payment of fine of Rs.200/-, the respondent is granted time of 20 days within which he shall pay the fine, failing which the sentence imposed in default will have to be undergone by him.

(J.M.Panchal, J.)

(patel)